

Order

Michigan Supreme Court
Lansing, Michigan

February 1, 2005

Clifford W. Taylor
Chief Justice

ADM File No. 2004-40

Michael F. Cavanagh
Elizabeth A. Weaver
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Justices

Amendment of Rule 3.215
of the Michigan Court Rules
(Domestic Relations Referees)

On order of the Court, notice of the proposed changes and an opportunity for comment in writing and at a public hearing having been provided, and consideration having been given to the comments received, the following amendment of Rule 3.215 of the Michigan Court Rules is adopted, effective May 1, 2005.

[Additions are indicated by underlining and
deletions are indicated by strikeover.]

Rule 3.215 Domestic Relations Referees

- (A) Qualifications of Referees. A referee appointed ~~by the chief judge of the circuit~~ pursuant to MCL 552.507(1) must be a member in good standing of the State Bar of Michigan. A non-attorney friend of the court ~~who is not a lawyer, but who is was~~ serving as a referee ~~at the time of adoption of this rule, when this rule took effect on~~ May 1, 1993, may continue to serve. ~~A successor must meet the qualifications established by this rule.~~
- (B) Referrals to the Referee.
- (1) The chief judge may, ~~refer motions of a particular kind to a referee, by~~ administrative order, direct that specified types of domestic relations motions be heard initially by a referee.
 - (2) To the extent allowed by law, the judge to whom ~~an~~ a domestic relations action is assigned may refer other motions in that action to a referee
 - (a) on written stipulation of the parties,
 - (b) on ~~written~~ a party's motion ~~by a party~~, or
 - (c) on the judge's own initiative.
 - (3) In domestic relations matters, the judge to whom an action is assigned, or the chief judge by administrative order, may authorize referees to conduct settlement conferences and, subject to judicial review, scheduling conferences.

(C) Scheduling of the Referee Hearing.

- (1) Within 14 days after receiving a motion referred under subrule (B)(1) or a ~~referral under subrule (B)(2)~~, the referee must arrange for service of a notice scheduling a referee hearing ~~schedule the matter for hearing~~.
- (2) ~~The referee must serve a notice of hearing on the attorneys for the parties, or on the parties if they are not represented by counsel. The notice of hearing must clearly state that the matter will be heard by a referee.~~
- (2) The referee may adjourn a hearing for good cause without preparing a recommendation for an order, except that if the adjournment is subject to any terms or conditions, the referee may only prepare a recommendation for an adjournment order to be signed by a judge.

(D) Conduct of Referee Hearings.

- (1) The Michigan Rules of Evidence apply to referee hearings.
- (2) A referee must provide the parties with notice of the right to request a judicial hearing by giving
 - (a) oral notice during the hearing, and
 - (b) written notice in the recommendation for an order.
- (3) Testimony must be taken in person, except that, for good cause, a referee may allow testimony to be taken by telephone or other electronically reliable means, ~~in extraordinary circumstances~~.
- (4) An electronic or stenographic record must be kept of all hearings.

(E) Posthearing Procedures.

- (1) Within 21 days after a hearing, ~~except for a hearing on income withholding,~~ the referee must either make a statement of findings on the record or submit a written, signed report containing a summary of testimony and a statement of findings. In either event, the referee must make a recommendation for an order and arrange for it to be submitted to the court and the attorneys for the parties, or the parties if they are not represented by counsel. A proof of service must be filed with the court. ~~If the recommendation for an order is approved by the court and no written objection is filed with the court clerk within 21 days after the recommendation is served on the attorneys for the parties, or the parties if they are not represented by counsel, the order will take effect.~~

- (a) The referee must find facts specially and state separately the law the referee applied. Brief, definite, and pertinent findings and conclusions on the contested matters are sufficient, without overelaboration of detail or particularization of facts.
 - (b) The referee's recommended order must include:
 - (i) a signature line for the court to indicate its approval of the referee's recommended order;
 - (ii) notice that if the recommended order is approved by the court and no written objection is filed with the court clerk within 21 days after the recommended order is served, the recommended order will become the final order;
 - (iii) notice advising the parties of any interim effect the recommended order may have; and
 - (iv) prominent notice of all available methods for obtaining a judicial hearing.
 - (c) If the court approves the referee's recommended order, the recommended order must be served within 7 days of approval, or within 3 days of approval if the recommended order is given interim effect, and a proof of service must be filed with the court. If the recommendation is approved by the court and no written objection is filed with the court clerk within 21 days after service, the recommended order will become a final order.
- (2) If the hearing concerns income withholding, the referee must arrange for a recommended order to be submitted to the court forthwith. If the recommended order is approved by the court, it must be given immediate effect pursuant to MCL 552.607(4).
 - (3) A party may obtain a judicial hearing on any matter that has been the subject of a referee hearing and that resulted in a statement of findings and a recommended order by filing
 - (a) ~~a written objection and notice of hearing within 14 days after the referee's recommended order is served on the attorneys for the parties, or the parties if they are not represented by counsel, if the order is for income withholding, or~~
 - (b) a written objection and notice of hearing within 21 days after the referee's recommendation for an order is served on the attorneys for

the parties, or the parties if they are not represented by counsel, if ~~the order concerns any other matter.~~ The objection must include a clear and concise statement of the specific findings or application of law to which an objection is made. Objections regarding the accuracy or completeness of the recommendation must state with specificity the inaccuracy or omission.

- (4) The party who requests a judicial hearing must serve the objection and notice of hearing on the opposing party or counsel in the manner provided in MCR 2.119(C).
 - (5) A circuit court may, by local administrative order, establish additional methods for obtaining a judicial hearing.
 - (6) The court may hear a party's objection to the referee's recommendation for an order on the same day as the referee hearing, provided that the notice scheduling the referee hearing advises the parties that a same-day judicial hearing will be available and the parties have the option of refusing a same-day hearing if they have not yet decided whether they will object to the referee's recommendation for an order.
 - (7) The parties may waive their right to object to the referee's recommendation for an order by consenting in writing to the immediate entry of the recommended order.
- (F) Judicial Hearings.
- (1) The judicial hearing must be held within 21 days after the written objection is filed, unless time is extended by the court for good cause.
 - (2) ~~If both parties consent, the judicial hearing may be based solely on the record of the referee hearing.~~ To the extent allowed by law, the court may conduct the judicial hearing by review of the record of the referee hearing, but the court must allow the parties to present live evidence at the judicial hearing. The court may, in its discretion:
 - (a) prohibit a party from presenting evidence on findings of fact to which no objection was filed;
 - (b) determine that the referee's finding was conclusive as to a fact to which no objection was filed;
 - (c) prohibit a party from introducing new evidence or calling new witnesses unless there is an adequate showing that the evidence was not available at the referee hearing;

- (d) impose any other reasonable restrictions and conditions to conserve the resources of the parties and the court.
- (3) If the court determines that an objection is frivolous or has been interposed for the purpose of delay, the court may assess reasonable costs and attorney fees.
- (G) Interim Effect for Referee's Recommendation for an Order.
- (1) Except as limited by subrules (G)(2) and (G)(3), the court may, by an administrative order or by an order in the case, provide that the referee's recommended order will take effect on an interim basis pending a judicial hearing. The court must provide notice that the referee's recommended order will be an interim order by including that notice under a separate heading in the referee's recommended order, or by an order adopting the referee's recommended order as an interim order.
- (2) The court may not give interim effect to a referee's recommendation for any of the following orders:
- (a) An order for incarceration;
- (b) An order for forfeiture of any property;
- (c) An order imposing costs, fines, or other sanctions.
- (3) The court may not, by administrative order, give interim effect to a referee's recommendation for the following types of orders:
- (a) An order under subrule (G)(2);
- (b) An order that changes a child's custody;
- (c) An order that changes a child's domicile;
- (d) An order that would render subsequent judicial consideration of the matter moot.

Staff Comment: The February 1, 2005, effective May 1, 2005, amendments implement 2004 PA 210, which redefines "de novo hearings" and allows trial courts to give interim effect to a referee's recommended order pending a hearing de novo pursuant to Michigan Court Rules.

The staff comment is not an authoritative construction by the Court.

I, CORBIN R. DAVIS, Clerk of the Michigan Supreme Court, certify that the foregoing is a true and complete copy of the order entered at the direction of the Court.



February 1, 2005 ⁵ Angela J. Meyer
Deputy Clerk